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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. Appln No. 10/720,005

Filed: November 21, 2003

(Attorney's Docket No. H-203754)

Confirmation No. 3992

Inventor: Matthew Howard Fronk

Art Unit: 1795

TITLE: CORROSION RESISTANT
PEM FUEL CELL

Examiner: Tracy Mae Dove

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUPPLEMENTAL REPLY BRIEF

Sir:

This is Appellants' response to the Examiner's Answer mailed November 6, 2009 and the Notice from the Board of Appeals returning the case to the Examiner.

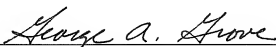
The Examiner's Answer reiterates the same issues regarding Appellants' right to file a broadening reissue application. Appellants have fully addressed these issues in Appellants' Appeal Brief filed October 20, 2008 and Reply Brief filed July 10, 2009, the content of which is hereby incorporated by reference and hereby repeated.

The Examiner's Reply also adds the New Ground of Rejection regarding Appellants not filing a Supplemental Declaration. However, the Notice from the Board of Appeals is improper because Appellants have indicated that a Supplemental declaration will be filed – see Applicants' Third Preliminary Amendment dated

September 26, 2005. The only requirement under MPEP 1414.01 is that the Supplemental Declaration be filed before allowance.

Therefore Appellants' request that the appeal go forward for a decision on the substantive issue of whether Appellants are entitled to file a broadening reissue application under the facts and Appellants will file a Supplemental Declaration once signatures have been obtained on the same.

Respectfully submitted,


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Dated: January 6, 2010